CF0000063555

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR (MP)

CRIMINAL APPEAL NO. 1311 /2000.

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CRIMINAL PROCEDURE CODE.

APPELLANT (IN JAIL) : Pramod Singh @ Raju Singh son of Ram Singh Rajpoot, aged about 29 years, occupation Furniture, resident of village Amoli, P.S. Sacheti, Dist. Kanpur (UP) at present resident of Station-Pataward No.9, Dist.Rajnandgaon(MP)

- Versus-

RESPONDENT : State of Madhya Pradesh

(23)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1311 of 2000

Pramod Singh alias Raju Singh

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
DHIRENDRA MISHRA
Judge

HON'BLE SHRI JUSTICE L.C. BHADOO

Sd/-
L.C.BHADOO
Judge

POST FOR JUDGMENT ON 26th-02-2007

Sd/-
J U D G E
26 /02/2007

(24)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1311 of 2000

Pramod Singh alias Raju Singh

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

Present: -

Mr. R.K. Jain, Advocate: For the appellant.

Mr. Akhil Mishra, Panel Lawyer: For the State/respondent.

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND

HON'BLE MR.DHIRENDRA MISHRA, JJ.

J U D G M E N T

(Delivered on 26th February, 2007)

Following judgment of the Court was delivered by Dhirendra Mishra, J:-

1. The appellant has preferred this criminal appeal under Section 374 (2) of the Code of Criminal Procedure (for short 'the Code') against the judgment dated 24th April, 2000 passed in Sessions Trial No.70/99 by the Additional Sessions Judge, Rajnandgaon, by which learned Additional Sessions Judge after holding the appellant guilty for commission of offence under Sections 394 red with Section 397 and Section 302 of the Indian Penal Code (for short 'the IPC'), sentenced him to undergo R.I. for seven years and to pay a fine of Rs.200/- & R.I. for life and to pay a fine of Rs.2,000/- respectively with usual default clause.

2. Briefly stated the case of prosecution is that on 9.3.1999 complainant Sanjay Agarwal lodged a Dehati Nalishi (Ex.P-1)

in the Police Station Lalbagh, Rajnandgaon mentioning therein that they had engaged Javerilal (since deceased) as 'Watchman' in their par-boiled rice mill plant, which is closed since last three months. His brother namely Kishan Agarwal received telephonic message from one Alok Rungta that their Watchman has been murdered, whereupon he reached to his plant and went in the office room where Javerilal used to sleep. The room was closed from the inside, therefore, they saw from the window situated in the rear side and found that Javerilal was lying dead. Blood was splashed around. Some unknown person has killed Javerilal with some lethal weapon. Since watchman Subhash of nearby Poha Mill was also murdered in the same night it appears that the same person has murdered Javerilal. On the basis of Dehati Nalishi, First Information Report (Ex.P-12) was registered, inquest over the dead body of deceased was prepared in presence of the witnesses, same was sent for autopsy to the District Hospital, Rajnandgaon, where Dr. H.K. Joshi (PW-11) conducted postmortem examination on the body of deceased and submitted his report Ex.P-11. One blood stained iron rod, blood stained pocket diary, blood stained bed-sheet, cover of pillow and blood stained blanket were taken into possession vide Ex.P-4 from the place of incident. On the basis of memorandum of the appellant (Ex.P-6) a wrist watch was recovered from the house of appellant vide Ex.P-7. Test identification parade of the appellant was conducted on 13.3.1999 by the Executive Magistrate Shri G.R. Mahipal (PW-15), where witnesses namely Rajendra Kumar (PW-6), Munnalal (PW-7) & Deonath (PW-9) have identified the appellant vide Ex.P-8, P-9 & P-10. The appellant was also identified in the test identification parade by witnesses namely Sanjay, Bhagwan Singh & Ramgulal vide Ex.P-17, P-18 &

P-19. On 16.3.1999 a pocket diary of the appellant was also taken into possession vide seizure memo of Ex.P-5. Sealed bag containing pant, underwear and shirt, another sealed plastic jar containing viscera, small intestine and big intestine, another sealed plastic jar containing parts of body of deceased and a small bottle containing liquid brought from the hospital were taken into possession vide Ex.P-16. Blood stained seized articles were sent for chemical examination to the Forensic Science Laboratory, Sagar, from where report Ex.P-20 was received. Seized articles were also sent to the Serologist and Chemical Examiner and report of the Serologist is Ex.P-54. Pocket diary seized from the spot, specimen handwriting of the appellant and diary of the appellant bearing his old handwriting were sent to the Director, Handwriting Expert, Police Headquarters, Bhopal (M.P.) vide Ex.P-22 and the reports of the State Examiner of questioned documents dated 25.11.1999 are Ex.P-45 & P-46 respectively. Spot map (Ex.P-47) was prepared by the Investigating Officer on 9.3.1999. The specimen signatures of the appellant on six separate papers were taken in presence of the witnesses vide Ex.P-9.

3. After completing the investigation, charge sheet was filed against the accused/appellant in the Court of Chief Judicial Magistrate, Rajnandgaon who in turn committed the case to the Court of Sessions Judge, Rajnandgaon and the same was received on transfer for trial by learned Additional Sessions Judge, who framed charges under Section 394 read with Section 397 and Section 302 of the IPC. The appellant abjured his guilt. The prosecution in order to establish the charges against the appellant examined in all 18 witnesses. Thereafter, the statement of appellant was recorded under Section 313 of the Cr.P.C. in which he denied the

circumstances appearing against him in the prosecution case and pleaded that persons who had identified him were firstly beaten in the police station, thereafter they were made to identify him. Afterwards, he was also beaten. No watch or diary was seized from him. For identification firstly he was called on the main gate of jail, where all the persons who were present in the police station were sitting and thereafter identification parade was done. All the witnesses were first apprehending by the police. He was working in the Bombay Furniture, Rajnandgaon since last one month when police caught him. The Police has falsely implicated him, he has been implicated at the behest of *'Seth'* by the witnesses. He was first arrested by the police and thereafter he was let off. He has been falsely implicated. However, learned Additional Sessions Judge convicted and sentenced the appellant as described above.

4. Homicidal death of Javerilal is not in dispute. Even otherwise from perusal of the postmortem report of Ex.P-11, which has been proved by Dr. H.K. Joshi (PW-11), in which injuries described below were found on the person of the deceased and the doctor opined that the cause of death of deceased was coma due to injuries over the head and the death was homicidal in nature. The following injuries were present over the body of the deceased:-

a. one contusion over the right side of skull where skull bone broken in five pieces and cheek bone into two pieces.

b. Three lacerated wounds over the right side of skull i.e. (i) one lacerated wound near the occipital region lateral to mid-ragital line wide underneath bone broken. (ii) one lacerated wound infront of injury No.(a). (iii) one lacerated wound above root of nose lateral to mid sagital and brain material emerging out of it.

c. Two injuries over and around right ear.

d. One lacerated wound in the size of 1"x1/4" full thickness of pinna.

5. In this case, there is no eyewitness to the incident and the conviction is rests on the circumstantial evidence. The circumstances relied upon by the trial court for convicting the appellant are as under:-

(i) Javerilal was murdered in the par-boiled plant.

(ii) He was murdered by the blood stained rod found there.

(iii) The appellant was caught in the nearby Shivnath Rice Mill in the same night.

(iv) At the time when he was caught in the adjacent rice mill, the appellant was told his name as Subhash, which was false.

(v) On the next day morning the appellant fled from there.

(vi) The appellant has been identified by the witnesses.

(vii) Diary (EX.P-23) seized from the place of incident belonged to the appellant.

(viii) Wrist watch of the deceased was seized from the house of the appellant.

6. Learned counsel for the appellant argued that the witnesses, who have identified the appellant in the test identification parade, were in fact shown the appellant in the police station, they were also shown the photograph of the appellant before the test identification parade and therefore, credence could not have been given to the test identification parade. He further submits that there are material discrepancies between the statements of witnesses, who claimed that they caught the appellant in Shivnath Rice Mill. Furthermore, it is alleged that the appellant was kept in the confinement in the bathroom for the whole night and in the same night two murders had taken place in the

neighbouring rice mills, however, the murders were not discovered till morning, which is highly improbable. The witnesses of memorandum (Ex.P-5) namely Devlal Yadav (PW-5) & Shatrughan (PW-5) have denied that the appellant gave any disclosure statement in pursuance of which wrist watch was allegedly seized and they have been declared hostile. Even seizure has not been proved and therefore, the recovery of wrist watch could not have been considered as a circumstance to convict the appellant. He further submits that another circumstance heavily relied upon by the trial court is the recovery of pages of diary from the spot, which belonged to the appellant. However, in the spot map (Ex.P-47) prepared by the Investigating Officer, it is not mentioned that the pages of diary were lying there. In fact, false evidence has been created in the shape of recovery of diary from the spot and recovery of wrist watch belonging to the deceased at the instance of the appellant. In the aforesaid circumstances, the defence of the appellant that he has been falsely implicated in the crime in question was more probable. The chain of circumstances relied upon by the prosecution is not complete and the appellant deserves to be acquitted.

7. On the other hand, learned Panel Lawyer for the State submitted that the presence of appellant in the fateful night in Shivnath Rice Mill is established by the eyewitnesses, who caught him and confined him in the bathroom throughout the night. Murder of Javerilal & Subhash took place in the vicinity in the same night. When the appellant was caught, he was putting out the blood stained *baniyan* and he gave false explanation that in fact, it was paint. He also told false name and further stated that he is watchman in the nearby industry, which was subsequently found to be false. Apart

from this the blood stained diary (Ex.P-23) recovered from the spot belonged to the appellant and specimen signatures of the appellant as also handwriting of the appellant in the old diary recovered from his house tallied with the handwriting of the pocket diary seized from the spot. Moreover, at the instance of the appellant wrist watch belonging to the deceased was also seized from the house of appellant, in which the name of deceased Javerilal was engraved and the same has been correctly identified by Dharamchand (PW-10), brother of deceased. He also submits that the chain of circumstances relied upon by the trial court is complete in all respect which establishes the guilt of appellant beyond reasonable doubt.

8. We have heard Mr. R.K. Jain, learned counsel for the appellant and Mr. Akhil Mishra, Panel Lawyer on behalf of the State/respondent.

9. So far as the circumstance that in the night of incident the appellant was caught in the premises of Shivnath Rice Mill is concerned, to establish this fact the prosecution has examined Kalika Prasad Shrivastava (PW-8), watchman of Shivnath Rice Mill, who has stated that on the date of incident he was in night duty, he was sitting with Munnlal (PW-7), he spotted a man in a underwear & baniyan, who entered in the mill. Firstly he look him to be a worker, however, when he did not return, he suspected that he might be a thief and thereafter both of them went inside the mill and when they reached near the place, which was called 'round chalni', they saw that the person who had entered the mill was coming out of 'round chalni', he ran towards me, whereupon, he brandish a small club, which he was having, on which he went towards Munnalal and thereafter both were

involved in scuffle. He called Deonath Mistry. When the said person, who entered in the mill, saw all of them, he calmed down. On being asked by Munnalal, he told his name as Subhash and that he is working in neighboring mill. He informed about the incident to the owner of mill, who asked him to lock him in the bathroom, whereupon, they locked him at about 12-1.00 a.m. in the bathroom. In the morning, the owner of the mill came and in the meanwhile the person whom they had locked in the bathroom got an opportunity to free from there. However, this witness could not identify the appellant at the time of his examination. Statement of this witness is duly corroborated by PW-7 Munnalal, who has narrated identical facts as stated by PW-8. Munnalal (PW-7) has further stated that the person whom they have locked in the night of incident was the accused person present in the Court. PW-6 Rajendra Kumar Kunwar & PW-9 Deonath, who were also present when the appellant was caught in Shivnath Rice Mill, have also established this fact that in the night of incident the appellant was caught in Shivnath Rice Mill premises, he was locked in the bathroom, from where he fled away in the morning.

10. So far as the test identification parade in the jail by PW-15 Shri G.R. Mahipal, Executive Magistrate is concerned, even if the test identification parade may not inspire confidence, as from the statement of these witnesses it has come that they had seen the appellant, they were shown photograph of the appellant before test identification parade and they had also an occasion to see him in the police station. Nevertheless, the fact remains that all these witnesses except PW-8 have duly identified the appellant and they have stated that he was the person whom they have caught in the night of incident in Shivnath Rice Mill. The evidence given by these

witnesses is substantive evidence with respect to the identity of the appellant and thus, the evidence has rightly been accepted by the trial court to arrive at a conclusion that in the night of incident the appellant was present in Shivnath Rice Mill and in the vicinity of this mill two persons namely Subhash & Javerilal were murdered.

11. So far as the recovery of wrist watch on the memorandum of appellant is concerned, Devlal Yadav (PW-4) & Shatrughan (PW-5), witnesses of memorandum of seizure and recovery (Ex.P-6 & P-7) have turned hostile and stated that the accused did not give any statement to the police in their presence nor he had handed over anything in their presence. However, they have stated that wrist watch, clothing, Rs.400/- and slippers were recovered from the house of accused and in the seized wrist watch Javerilal was engraved. They have admitted that they signed in two papers on being asked by the police. In the cross-examination by the prosecution they have stated that they had gone to the house of the appellant from the police station along with accused Pramod. Accused had taken them to his house, he had taken out a wrist watch from his suitcase and gave it to the police. Though statement of these witnesses do not inspire confidence, nevertheless, the investigating officer Shri Sanjay Pundir (PW-17), Sub Inspector, Police Station Lalbagh in Para 7 of his statement has stated that on 10.3.1999 he recorded the memorandum of Pramod Singh, who informed that he has kept wrist watch in his room in a suitcase and thereafter the wrist watch was seized at the instance of appellant in presence of the witnesses. Memorandum of Ex.P-6 and seizure memo of Ex.P-7 of wrist watch bears signatures of the appellant and the witnesses have also appended their signatures. If the statement of this

witness and the statements of PW-4 & PW-5 are cumulatively read, we have no reason to disbelieve the statement of Investigating Officer regarding seizure of wrist watch at the instance of the appellant, as the witnesses have also stated this fact that they had not denied the signature over the memorandum. They have further stated that the wrist watch was seized from the house of the appellant.

12. So far as another circumstance being recovery of pocket diary of the appellant from the place of incident is concerned, the diary was taken into possession vide seizure memo of Ex.P-4, the witness of seizure memo namely Sanjay Agarwal (PW-1) has stated that from the place of incident one iron rod, pocket diary & bed-sheet were seized vide Ex.P-4. Another old diary of the appellant was seized from the appellant vide Ex.P-5, specimen signatures of the appellant were taken on six separate papers and these three articles were sent to the handwriting expert, who examined the sent documents and gave his opinion vide Ex.P-45 & P-46 in which he opined that the person who wrote the red enclosed writings stamped and marked as S1 to S18, also wrote the red enclosed writings similarly stamped and marked as Q1 & Q2. This report has been duly proved by Shri R.C. Sharma (PW-16) and the defence has not been able to bring anything in the cross-examination which discredits or makes the report given by this witness doubtful.

13. Thus, on the basis of aforesaid discussions we are of the considered opinion that the circumstances relied upon by the trial court for convicting the appellant under Sections 394 read with Section 397 & Section 302 of the IPC is based on the evidence available on record and the circumstances have been duly proved independently. The chain of circumstance so

proved, unerringly point towards the guilt of the appellant and the learned trial court has not committed any illegality or irregularity in passing the impugned judgment.

14. In the result, the appeal is without merit, same is liable to be dismissed and it is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Roshan/-